Basic information

2002/2065(COS) COS - Procedure on a strategy paper (historic) Combating Community fraud: criminal-law protection of the financial interests, the European Prosecutor. Green Paper **Subject** 8.10 Revision of the Treaties, intergovernmental conferences 8.70.04 Protecting financial interests of the EU against fraud	Procedure completed

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
CONT Budgetary Control	THEATO Diemut R. (PPE-DE)	23/01/2002

Committee for opinion	Rapporteur for opinion	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	PACIOTTI Elena Ornella (PSE)	20/02/2002
JURI Legal Affairs and Internal Market	PATRIE Béatrice (PSE)	19/02/2002
AFCO Constitutional Affairs	DIMITRAKOPOULOS Giorgos (PPE-DE)	26/03/2002
PETI Petitions	VON BOETTICHER Christian Ulrik (PPE-DE)	24/01/2002

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	2414	2002-03-05
Justice and Home Affairs (JHA)	2411	2002-02-28

European Commission

Commission DG	Commissioner
Justice and Consumers	

Key events

Date	Event	Reference	Summary
11/12/2001	Non-legislative basic document published	COM(2001)0715	Summary
28/02/2002	Debate in Council		
05/03/2002	Debate in Council		
11/04/2002	Committee referral announced in Parliament		
18/02/2003	Vote in committee		Summary
18/02/2003	Committee report tabled for plenary	A5-0048/2003	
27/03/2003	Decision by Parliament	T5-0130/2003	Summary
27/03/2003	Debate in Parliament		
27/03/2003	End of procedure in Parliament		
11/03/2004	Final act published in Official Journal		

Technical information

Procedure reference	2002/2065(COS)
Procedure type	COS - Procedure on a strategy paper (historic)
Procedure subtype	Commission strategy paper
Legal basis	Rules of Procedure EP 148
Stage reached in procedure	Procedure completed
Committee dossier	CONT/5/16112

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, single reading		A5-0048/2003	18/02/2003	
Text adopted by Parliament, single reading		T5-0130/2003 OJ C 062 11.03.2004, p. 0022-0191 E	27/03/2003	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2001)0715	11/12/2001	Summary
Follow-up document	COM(2003)0128	19/03/2003	Summary

Combating Community fraud: criminal-law protection of the financial interests, the European Prosecutor. Green Paper

2002/2065(COS) - 19/03/2003 - Follow-up document

The public consultation following the Green Paper gave rise to more than 200 written and oral contributions from interested parties. This follow-up Report summarises the opinions and contributions that have been received by the Commission during 2002. It is made up of a general evaluation, followed by an evaluation of the responses received by subject area. The first part deals with views on the need to create a European Prosecutor, reaffirming and detailing the Public Prosecutor's added value. The second half focuses on institutional and legal questions that will need to be addressed in greater depth. Overall the results are positive. The necessity of establishing a legal basis in the Treaty is emphasised. Without Treaty amendment, the Commission states that it has no power to make specific proposals for secondary legislation going beyond the preferences that it expressed in the Green Paper. The outcome of the public hearings does, however, enable the Commission to identify a series of topics requiring closer study: - the relationship between the European Prosecutor and existing European authorities. Firstly, the role of the court of Justice in settling conflicts of jurisdiction needs specific analysis. Objective criteria must govern the choice of Member State of trial. It is particularly important also to study the various ways in which the European Prosecutor and Eurojust could be combined. The future of OLAF must be considered too; - defence rights and the administration of evidence in the context of establishing a European Prosecutor. In procedural terms, two essential topics emerge from the hearing. The first concerns the equivalent protection of defence rights. The Commission will incorporate the results of the Green Paper on the procedural guarantees for persons challenged in criminal proceedings to find out whether it will be advisable to go beyond the standards already shared by the Member States when establishing the European Prosecutor. Secondly, the value in a Member State of evidence gathered by a European Prosecutor in another Member State supposes an approximation of national legislation, confined to the minimum needed to implement the mutual admissibility principle. The extent of harmonisation of the law of evidence felt to be desirable should be studied in more detail in this context, in conjunction with the work programme in judicial cooperation; - the Prosecutor's connection with national criminal systems. The Commission plans to show how the Prosecutor, with guarantees of independence, could integrate into the criminal law systems of Member States without affecting their organisation. Examples are, neutrality in relation to the prerogatives of examining magistrates or to the plurality of law enforcement agencies. It will clarify how hybrid cases could be handled, such as by joint action or withdrawal by the Prosecutor or national authority. In conclusion, the Commission states that only the establishment of the European Prosecutor in the Treaty, accompanied by a legal basis for the development of secondarily legislation to ensure his connection with national legal systems, is likely to answer the current difficulties.

Combating Community fraud: criminal-law protection of the financial interests, the European Prosecutor. Green Paper

2002/2065(COS) - 27/03/2003 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution drafted by Diemut THEATO (EPP-ED, Germany) on the Commission's Green Paper. (Please refer to the document dated 18/02/03.) Parliament stated that it supported the principle behind the establishment of an European Public Prosecutor and greater cooperation between national judicial authorities, but insisted that there are a number of substantive issues that have to be regulated in part under secondary legislation. These include legal systems and practices, language and administrative practice, the consequences for national criminal law, the risk of double jeopardy and the overlapping of competences between national and European Prosecutors, the admissibility of evidence, and mutual recognition.

Combating Community fraud: criminal-law protection of the financial interests, the European Prosecutor. Green Paper

2002/2065(COS) - 11/12/2001 - Non-legislative basic document

PURPOSE: to launch an EU-wide debate on the future role and powers of a European Public Prosecutor relating to the Community's financial interests. CONTENT: fraud within the EU is a pervasive and on-going problem. It involves all sectors of the criminal classes from small time fraudsters to organised crime. The current fragmentation of European provisions to combat fraudulent activities undoubtedly lays the EU and its financial interests open to exploitation and abuse. Hence the mooting of the idea for a European law-enforcement area governed by a European Public Prosecutor. The need to protect the Community's financial interests arose following the allocation of own resources to the Community in 1976. Much work over the past ten years has gone into the idea of revising the EU Treaties to allow for the appointment of a European Prosecutor whose remit would be to investigate financial fraud committed against the Community. The European Parliament has been a particularly vocal supporter and proponent of the concept. In recent years a growing number of Member States have acknowledged the need to investigate what role a European Prosecutor could play in the fight against fraud. This Green Paper is thus a culmination of on-going working groups and is being presented within the context of the 2001-2003 action plan on protecting the Community's financial interests. The conclusions of the consultation process will then be presented to the Convention on the future of the European Union. The scale of fraud affecting the Community's financial interests detected by the Member States and the European Anti-Fraud Office (OLAF) in 1999 was estimated at EUR 413 million. Overall, these cases amount to some EUR 122 million of the Community's own resources and EUR 291 million on expenditure. EUR 170 million was in the area of agricultural expenditure, EUR 73 million in the area of external action by the Communities and EUR 48 million in the field of structural actions. In order to combat the scale of this crime, the Green Paper argues that prevention and detection is not enough. The need for effective enforcement activities remains a high priority. At the inter-governmental conference in Nice 2000, the Commission sought to revise the Treaties in such a way as to set up a European Public Prosecutor, to include only the essential characteristics of the European Prosecutor (appointment, removal, duties and independence). The rules and mechanics governing the Prosecution

Service's operation would be regulated by secondary legislation. The Commission bid failed due to time constraints and Member States' request for further information. This Green Paper seeks to outline a possible scenario for such secondary legislation, including definitions of offences and penalties, determining how Community legislation will mesh with national criminal systems, procedures for laying cases before the European Public Prosecutor, his/her powers of investigation and lastly the judicial review of acts done by his/her office. Depending on the conclusions of the consultation process the Commission may propose adding new provisions to the Treaty to provide a legal basis for: 1) The appointment of an independent European Public Prosecutor centralising the management of investigations and prosecutions in cases concerning the protection of the Community's financial interests; and 2) The adoption of a set of specific rules determining among other things: - A highly decentralised organisation based on Deputy European Public Prosecutors with the assistance of national investigation services in the Member States; - The rules of substantive criminal law to be applied by him/her with a trend towards unification of offences etc. - The criminal procedure be applied by the European Public Prosecutor in full respect of mutual recognition of investigative measures provided for in national law. - Exception from the mandatory prosecution principle and the distribution of cases; - Rules governing the admissiblility of evidence; - Relations between the European Public Prosecutor and international players in the field; - Procedures for reviewing acts done under the authority of the European Public Prosecutor. Lastly, courts agendas, trials and the execution of penalties would remain entirely governed by national law - subject to the principle that the prosecution is in the hands of the European Public Prosecutor.